IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 5348 of 2005

Between:

N.Prameela Devi, w/o late Vinayaka Rao,aged 53 years
r/o Chodavaram, Guntur Rural Mandal, Guntur.

..... PETITIONER

AND

1 The Commissioner for Prohibition and Excise, Hyderabad.
2 The Prohibition and Excise Superintendent, Guntur.
3 N.Srinivasa Rao, s/o Rattaiah, r/o D.No.3-1-4, Rajendra Nagar, Guntur.
4 N.Ramaiah, s/o Venkaiah, M/s.Srinivasa Bar and Restaurant Licence bearing

No.60/2001-02, D.No.4-16-124, Amarvathi Road, Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the action of the respondents 1 and 2 in granting IL 17 licence in the premises bearing D.NO.4-16-124/1, Amaravathi Road, Guntur and in proposing to renew the same in favour of the 4th respondent in the same premises for the excise year 2005-06 as illegal, arbitrary, and contrary to the provisions of the A.P.Excise Act and rules made thereunder and consequently direct the respondents 1 and 2 not to permit the 4th respondent to carry on the business in the premises bearing D.No.4-16-124/1, Amaravathi Road, Guntur.

Counsel for the Petitioner:MR.A.JAGANNATHA RAO

Counsel for the Respondent Nos.1 and 2: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent Nos.3 and 4: Mr.Rama Rao Ghanta

The Court made the following :

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O R D E R:

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The petitioner seeks to issue writ of mandamus directing the respondents 1 and 2 not to renew the IL-17 in favour of the respondent No.4 without obtaining her consent letter.

Learned Counsel for the petitioner submits that as per Rule 29(3) of A.P. Indian Liquor and Foreign Liquor Rules, 1970 (for short 'the Rules') no license for IL-17 shall be granted without insisting upon the production of the lease deed from the owner of the premises and the said condition also applies for the renewal as per Section 26-A of the said Rules.

I have perused the Rules 29 and 26-A of the said Rules. No doubt, there is a condition not to grant licence without the production of the lease deed from the owner of the said premises. There is no such condition for the existing licencee renewal of licnece under Rule 26-A of the said Rules. However, it is brought to my notice that the husband of the petitioner not only renewed the earlier lease deed, which was valid up to 31.03.2005, but also extended up to 30.03.2008 in respect of the said premises in question. Therefore, I am of the opinion that the petitioner is not entitled to object the grant of licence in favour of existing licence. It is brought to my notice that the licence was not renewed in favour fo the 4th respondent but it was granted in favour of the 3rd respondent, the lease was also granted in favour of the third respondent only.

The leaned counsel appearing for the petitioner submits that the husband of the petitioner died in September, 2002 and the alleged lease deed said to have been executed by him on 16.02.2002, may not be a genuine one.

I am afraid that this Court cannot decide the genuineness or otherwise of the said lease deed. Admittedly, the third respondent is in possession and he had the licence of IL-17, which is being renewed from time to time and is valid up to 31.03.2005 and as he is in possession of the said premises, he is also entitled for renewal of the licence. The petitioner cannot seek eviction of the third respondent indirectly without taking recourse under the provisions of the Transfer of Property Act. It is always open for the petitioner to terminate the lease granted in favour of the third respondent by issuing a notice under Section 106 of the Transfer of Property Act and as and when the petitioner obtains protection from the competent civil Court evicting the third respondent, the third respondent cannot have any grievance or defence to continue, merely because his licence has been renewed.

Accordingly, the Writ Petition is dismissed with the aforesaid observations. The stay granted earlier stands vacated. No costs.

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V.ESWARAIAH, J

Dated:23-03-2005

CCM

To

1 The Commissioner for Prohibition and Excise, Hyderabad.
2 The Prohibition and Excise Superintendent, Guntur.
3 2 CCs to the G.P. for Prohibition and Excise, High Court Buildings,

A.P.Hyderabad(OUT)

4 2 CD copies.